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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/811,838	03/19/2001	Duane D. Miller	20609/181 (PD 98076)	9221

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EXAMINER	
STOCKTON, LAURA LYNNE	
ART UNIT	PAPER NUMBER
1626	

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Please find below and/or attached an Office communication concerning this application or proceeding.

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EXAMINER

ART UNIT	PAPER NUMBER
	7

DATE MAILED:

This is a communication from the examiner in charge of your application.
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OFFICE ACTION SUMMARY

☐ Responsive to communication(s) filed on _____

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 D.C. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire _____ ~~month(s), or~~ thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-34 are pending in the application.
Of the above, claim(s) _____ is/are withdrawn from consideration.
☐ Claim(s) _____ is/are allowed.
☐ Claim(s) _____ is/are rejected.
☐ Claim(s) _____ is/are objected to.
☒ Claim(s) 1-34 are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
☐ The specification is objected to by the Examiner.
☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been

☐ received.
☐ received in Application No. (Series Code/Serial Number) _____.
☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of Reference Cited, PTO-892
☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
☐ Interview Summary, PTO-413
☐ Notice of Draftperson's Patent Drawing Review, PTO-948
☐ Notice of Informal Patent Application, PTO-152

--SEE OFFICE ACTION ON THE FOLLOWING PAGES--

09/811,838

DETAILED ACTION

Claims 1-34 are pending in the application.

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1, 3-7 and 12, drawn to products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^1$- and two of X^1, X^2 and X^3 are $R^1\text{-}Y^1\text{-}A$.

II. Claims 1 and 9-12, drawn to products of formula (I) wherein two of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^1$- and one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$.

III. Claims 1 and 12, drawn to products of formula (I) wherein all three of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^1$-.

IV. Claims 1 and 12, drawn to products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^1$-, one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$ and one of X^1, X^2 and X^3 is hydrogen.

V. Claims 1, 2 and 12, drawn to products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$- and two of X^1, X^2 and X^3 are $R^1\text{-}Y^1\text{-}A$.

VI. Claims 1 and 12, drawn to products of formula (I) wherein two of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$- and one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$.

VII. Claims 1 and 12, drawn to products of formula (I) wherein all three of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$-.

VIII. Claims 1 and 12, drawn to products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$-, one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$ and one of X^1, X^2 and X^3 is hydrogen.

IX. Claims 1, 8 and 12, drawn to products of formula (I) wherein one of X^1 and X^2 are linked together as –O-PO(OH)O- and X^3 is $R^1\text{-}Y^1\text{-}A$.

X. Claims 1 and 12, drawn to products of formula (I) wherein one of X^1 and X^2 are linked together as –O-PO(OH)O- and X^3 is hydrogen.

XI. Claims 1 and 12, drawn to products of formula (I) wherein one of X^1 and X^3 are linked together as –O-PO(OH)NH- and X^2 is R^1-Y^1-A.

XII. Claims 1 and 12, drawn to products of formula (I) wherein one of X^1 and X^3 are linked together as –O-PO(OH)NH- and X^2 is hydrogen.

XIII. Claims 1 and 12, drawn to products of formula (I) wherein two of X^1, X^2 and X^3 are R^1-Y^1-A and the remaining is hydrogen.

XIV. Claims 1 and 12, drawn to products of formula (I) wherein all three of X^1, X^2 and X^3 are R^1-Y^1-A.

XV. Claims 1 and 12, drawn to products of formula (I) not embraced by Groups I-XIV.

XVI. Claims 13-22, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO$-Z^1- and two of X^1, X^2 and X^3 are R^1-Y^1-A.

XVII. Claims 13-22, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^1$- and one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$.

XVIII. Claims 13-22, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^1$-.

XIX. Claims 13-22, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^1$-, one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$ and one of X^1, X^2 and X^3 is hydrogen.

XX. Claims 13-22, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$- and two of X^1, X^2 and X^3 are $R^1\text{-}Y^1\text{-}A$.

XXI. Claims 13-22, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$- and one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$.

XXII. Claims 13-22, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are $(HO)_2PO$-Z^2-P(OH)O-Z^1-.

XXIII. Claims 13-22, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO$-Z^2-P(OH)O-Z^1-, one of X^1, X^2 and X^3 is R^1-Y^1-A and one of X^1, X^2 and X^3 is hydrogen.

XXIV. Claims 13-22, drawn to methods of using products of formula (I) wherein one of X^1 and X^2 are linked together as –O-PO(OH)O- and X^3 is R^1-Y^1-A.

XXV. Claims 13-22, drawn to methods of using products of formula (I) wherein one of X^1 and X^2 are linked together as –O-PO(OH)O- and X^3 is hydrogen.

XXVI. Claims 13-22, drawn to methods of using products of formula (I) wherein one of X^1 and X^3 are linked together as –O-PO(OH)NH- and X^2 is R^1-Y^1-A.

XXVII. Claims 13-22, drawn to methods of using products of formula (I) wherein one of X^1 and X^3 are linked together as –O-PO(OH)NH- and X^2 is hydrogen.

XXVIII. Claims 13-22, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are R^1-Y^1-A and the remaining is hydrogen.

XXIX. Claims 13-22, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are R^1-Y^1-A.

XXX. Claims 13-22, drawn to methods of using products of formula (I) not embraced by Groups XVI- XXIX.

XXXI. Claims 23-26, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO$-Z^1- and two of X^1, X^2 and X^3 are R^1-Y^1-A.

XXXII. Claims 23-26, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are $(HO)_2PO$-Z^1- and one of X^1, X^2 and X^3 is R^1-Y^1-A.

XXXIII. Claims 23-26, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are $(HO)_2PO$-Z^1-.

XXXIV. Claims 23-26, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO$-Z^1-, one of X^1, X^2 and X^3 is R^1-Y^1-A and one of X^1, X^2 and X^3 is hydrogen.

XXXV. Claims 23-26, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO$-Z^2-P(OH)O-Z^1- and two of X^1, X^2 and X^3 are R^1-Y^1-A.

XXXVI. Claims 23-26, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are $(HO)_2PO$-Z^2-P(OH)O-Z^1- and one of X^1, X^2 and X^3 is R^1-Y^1-A.

XXXVII. Claims 23-26, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are $(HO)_2PO$-Z^2-P(OH)O-Z^1-.

XXXVIII. Claims 23-26, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$-, one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$ and one of X^1, X^2 and X^3 is hydrogen.

XXXIX. Claims 23-26, drawn to methods of using products of formula (I) wherein one of X^1 and X^2 are linked together as –O-PO(OH)O- and X^3 is $R^1\text{-}Y^1\text{-}A$.

XL. Claims 23-26, drawn to methods of using products of formula (I) wherein one of X^1 and X^2 are linked together as –O-PO(OH)O- and X^3 is hydrogen.

XLI. Claims 23-26, drawn to methods of using products of formula (I) wherein one of X^1 and X^3 are linked together as –O-PO(OH)NH- and X^2 is $R^1\text{-}Y^1\text{-}A$.

XLII. Claims 23-26, drawn to methods of using products of formula (I) wherein one of X^1 and X^3 are linked together as –O-PO(OH)NH- and X^2 is hydrogen.

XLIII. Claims 23-26, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are R^1-Y^1-A and the remaining is hydrogen.

XLIV. Claims 23-26, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are R^1-Y^1-A.

XLV. Claims 23-26, drawn to methods of using products of formula (I) not embraced by Groups XXXI-XLIV.

XLVI. Claims 27-30, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO$-Z^1- and two of X^1, X^2 and X^3 are R^1-Y^1-A.

XLVII. Claims 27-30, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are $(HO)_2PO$-Z^1- and one of X^1, X^2 and X^3 is R^1-Y^1-A.

XLVIII. Claims 27-30, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are $(HO)_2PO$-Z^1-.

IL. Claims 27-30, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^1\text{-}$, one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$ and one of X^1, X^2 and X^3 is hydrogen.

L. Claims 27-30, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1\text{-}$ and two of X^1, X^2 and X^3 are $R^1\text{-}Y^1\text{-}A$.

LI. Claims 27-30, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1\text{-}$ and one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$.

LII. Claims 27-30, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1\text{-}$.

LIII. Claims 27-30, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1\text{-}$, one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$ and one of X^1, X^2 and X^3 is hydrogen.

LIV. Claims 27-30, drawn to methods of using products of formula (I) wherein one of X^1 and X^2 are linked together as –O-PO(OH)O- and X^3 is R^1-Y^1-A.

LV. Claims 27-30, drawn to methods of using products of formula (I) wherein one of X^1 and X^2 are linked together as –O-PO(OH)O- and X^3 is hydrogen.

LVI. Claims 27-30, drawn to methods of using products of formula (I) wherein one of X^1 and X^3 are linked together as –O-PO(OH)NH- and X^2 is R^1-Y^1-A.

LVII. Claims 27-30, drawn to methods of using products of formula (I) wherein one of X^1 and X^3 are linked together as –O-PO(OH)NH- and X^2 is hydrogen.

LVIII. Claims 27-30, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are R^1-Y^1-A and the remaining is hydrogen.

LIX. Claims 27-30, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are R^1-Y^1-A.

LX. Claims 27-30, drawn to methods of using products of formula (I) not embraced by Groups XLVI-LIX.

LXI. Claims 31-33, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^1$- and two of X^1, X^2 and X^3 are $R^1\text{-}Y^1\text{-}A$.

LXII. Claims 31-33, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^1$- and one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$.

LXIII. Claims 31-33, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^1$-.

LXIV. Claims 31-33, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^1$-, one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$ and one of X^1, X^2 and X^3 is hydrogen.

LXV. Claims 31-33, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$- and two of X^1, X^2 and X^3 are $R^1\text{-}Y^1\text{-}A$.

LXVI. Claims 31-33, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$- and one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$.

LXVII. Claims 31-33, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$-.

LXVIII. Claims 31-33, drawn to methods of using products of formula (I) wherein one of X^1, X^2 and X^3 is $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$-, one of X^1, X^2 and X^3 is $R^1\text{-}Y^1\text{-}A$ and one of X^1, X^2 and X^3 is hydrogen.

LXIX. Claims 31-33, drawn to methods of using products of formula (I) wherein one of X^1 and X^2 are linked together as –O-PO(OH)O- and X^3 is $R^1\text{-}Y^1\text{-}A$.

LXX. Claims 31-33, drawn to methods of using products of formula (I) wherein one of X^1 and X^2 are linked together as –O-PO(OH)O- and X^3 is hydrogen.

LXXI. Claims 31-33, drawn to methods of using products of formula (I) wherein one of X^1 and X^3 are linked together as –O-PO(OH)NH- and X^2 is R^1-Y^1-A.

LXXII. Claims 31-33, drawn to methods of using products of formula (I) wherein one of X^1 and X^3 are linked together as –O-PO(OH)NH- and X^2 is hydrogen.

LXXIII. Claims 31-33, drawn to methods of using products of formula (I) wherein two of X^1, X^2 and X^3 are R^1-Y^1-A and the remaining is hydrogen.

LXXIV. Claims 31-33, drawn to methods of using products of formula (I) wherein all three of X^1, X^2 and X^3 are R^1-Y^1-A.

LXXV. Claims 31-33, drawn to methods of using products of formula (I) not embraced by Groups LXI-LXXIV.

LXXVI. Claim 34, drawn to process of making products of formula (I) wherein one or two of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^1\text{-}$.

LXXVII. Claim 34, drawn to process of making products of formula (I) wherein one or two of X^1, X^2 and X^3 are $(HO)_2PO\text{-}Z^2\text{-}P(OH)O\text{-}Z^1$.

The inventions are distinct, each from the other because of the following reasons: the products of Groups I-XV differ materially in structure and element so much so as to be patentably distinct. In addition, a reference that anticipates one group may not even render obvious the other.

Inventions of Groups I-XV and Groups XVI-LXXV are related as product and process of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the

instant case, the process of using the product as claimed can practiced with another materially different product such as the product of Group I or the product of Group IV, etc.

Inventions of Groups I, II, IV, V, VI and VIII and Groups LXXVI-LXXVII are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the process can be used to make other products.

Because these inventions are distinct for the reasons given above and the search required for Group XVI, for example, is not required for Group I, restriction for examination purposes as indicated is proper.

Additionally, Applicants are required to elect a single disclosed species (e.g. Example, page number and structural depiction) from whichever group is ultimately elected.

Further, Applicants are required to indicate how the species is embraced by the claims {e.g. X^1 is $(HO)_2PO\text{-}Z^1$, Z^1 is $-(CH_2)_l-$, l is zero, Q^1 is H_2, etc.}.

Upon the election of a single disclosed species, a generic concept, inclusive of the elected species, will be identified by the Examiner for examination.

Moreover, whatever specific compound is ultimately elected, applicants are required to list all claims readable thereon.

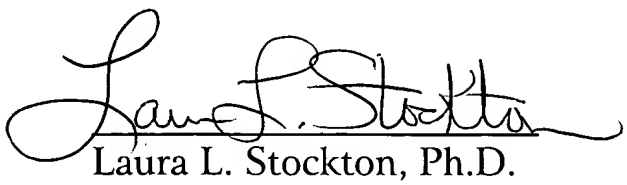
Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura L. Stockton whose telephone number is (703) 308-1875. The examiner can normally be reached on Monday-Friday from 6:00 am to 2:30 pm. If the examiner is out of the Office, the examiner's supervisor, Joseph McKane, can be reached on (703) 308-4537.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235, 308-0196 or 305-3290.

The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4556, 308-4242, 305-1935 or 308-2742.



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Art Unit 1626, Group 1620
Technology Center 1600

June 5, 2002